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9 **UNITED STATES DISTRICT COURT**
10 **WESTERN DISTRICT OF WASHINGTON**
11 **AT SEATTLE**

12 STATE OF WASHINGTON,

13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT OF
16 HEALTH AND HUMAN SERVICES;
ALEX M. AZAR, in his official capacity as
the Secretary of the United States
Department of Health and Human Services,

17 Defendants.

NO. 2:20-cv-01105

DECLARATION OF
KATHY L. OLINE

18 I, Kathy L. Oline, declare under penalty of perjury under the laws of the United States of
19 America that the foregoing is true and correct:

20 1. I am over the age of 18, have personal knowledge of the facts and circumstances
21 in this Declaration, and competent testify in this matter.

22 2. I am the Assistant Director of Research and Fiscal Analysis for the Washington
23 State Department of Revenue (DOR). I have been employed with DOR for 32 years. In my
24 position, I am responsible for making revenue projections based on changes to tax laws, or
25 otherwise to project the increases or decreases in state tax revenue of various events or
26 circumstances.

1 3. I have been asked to evaluate the tax revenue implications of certain events and
2 circumstances that will take place in the State of Washington if the Final Rule of the Department
3 of Health and Human Services entitled “Nondiscrimination in Health and Health Education
4 Programs or Activities, Delegation of Authority,” 85 Fed. Reg. 37160-248 (the “Final Rule”),
5 which was published in the Federal Register on June 19, 2020, takes effect.

6 4. I understand that the Final Rule is anticipated to result in the loss of healthcare
7 coverage for certain individuals in Washington State who identify as transgender and others
8 because it permits discrimination in healthcare on the basis of transgender status, as contrasted
9 with the prior version of the Final Rule that was published in 2016, 81 Fed. Reg. 31375-473
10 (May 18, 2016).

11 5. I understand that the Washington State Department of Health estimates that
12 transgender individuals will lose healthcare coverage for gender affirming healthcare services,
13 including hormone therapy and surgical procedures if the Final Rule takes effect, and that this
14 will result in the denial of services and coverage for therapy and procedures that would otherwise
15 be sought and provided. Declaration of Michele Roberts, ¶¶ 15-16.

16 6. DOR has conducted its own analysis of the likely impact of a reduction in
17 gender affirming healthcare services being provided to transgender Washingtonians if the Final
18 Rule takes effect. This analysis is based on the fact that Washington State imposes a business
19 and occupation (B&O) tax on revenues received by hospitals and medical providers for
20 performing healthcare services, and, assuming the reduction of gender affirming healthcare
21 services for transgender Washingtonians as a result of the Final Rule, these revenues and the
22 corresponding tax collections would decline.

23 7. The relevant B&O taxes include a service B&O tax on revenues to physicians
24 collected at a rate of 1.75%, and a service B&O tax on revenues to hospitals collected at a rate
25 of 1.5%.
26

1 8. DOR has collected data regarding the transgender population in Washington,
 2 the costs of gender reassignment treatments and procedures (including hormone therapies and
 3 surgical procedures related to gender transition), and the number of transgender individuals in
 4 Washington State who receive these kinds of procedures on an annual basis, and estimates that
 5 there will be a loss of B&O tax revenue collected by Washington if the Final Rule takes effect.

6 9. Specifically, DOR estimates that, beginning Fiscal Year 2021 and going
 7 forward through Fiscal Year 2025, the State will lose approximately:

- 8 a. \$186,000 per year in general fund B&O tax revenues;
- 9 b. \$79,000 per year in health services B&O tax revenues; and
- 10 c. \$31,000 per year in the B&O tax that funds the Workforce Educational
 11 Investment Account.

12 10. Accordingly, DOR estimates that if the Final Rule takes effect, the total B&O
 13 tax loss for Washington State to be \$296,000 each year for the next five fiscal years, or
 14 \$592,000 for the biennial budget ending with Fiscal Year 2023 and \$592,000 for the biennial
 15 budget ending with Fiscal Year 2025.

16 EXECUTED on this 14th day of July, 2020, in Tumwater, Washington.

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20 _____
 21 KATHY L. OLINE
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